

**Maine Bureau of General Services
Facility Energy Evaluation
Request for Proposals RFP # 201004688**

Section I. Introduction

The intent of the project is to conduct an energy-driven assessment of a designated portion of the state's facility infrastructure in a manner that goes beyond energy auditing to assess whether the very existence of the various facilities is putting forward the best possible energy footprint for the programs and facilities involved. The project will seek to assess the energy benefits of altering the facility portfolio through, for example, the expansion, reduction, consolidation and/or potential disposal of certain sites.

The project will seek to answer energy questions about the nature, location, size, number and uses of facilities, as well as energy sources and opportunities, all toward the goals of driving down energy consumption and increasing Maine's energy independence. The work will be done in the context of ensuring that the Departments and programs involved are fully supported in carrying out their respective responsibilities.

Based on market conditions, the requested level of resources is expected to allow the project to collect data, conduct an analysis, generate decision-quality data and produce actionable recommendations for reducing facility-related energy consumption and improving energy independence. The assessment is expected to focus on a region equivalent to the scale of a Maine county, although not necessarily any particular county. The facilities involved would be those controlled or occupied by the natural resource agencies in the selected region. The Bureau is pursuing this initiative in an effort to increase its energy independence, reduce carbon emissions, and to lower costs.

Facility Energy Evaluation

Section II. Scope of Work

The vendor will measure and collect data regarding the facilities listed in Attachment B for energy usage, energy needs and improvements including:

- Purpose, age and general condition of the facility
- The Energy Star building portfolio manager rating of the facility in its current condition.
- Exterior systems: roofs, walls, window systems, exterior doors and structural components
- Interior systems: walls, doors, floors and ceilings
- Heating, ventilation and air conditioning
- Electrical and electrical distribution
- Energy Conservation measures already taken
- Energy sources in use and otherwise reasonably available at the site
- The capacity of the facility to absorb additional or alternative personnel, uses and activity without expansion or substantial renovation, and a description of those additional or alternative uses to which the facility appears best suited.
- The extent to which the facility and its site readily lend themselves to cost-effective expansion.

Upon completion of the data collection, the vendor will analyze the facilities to determine areas of improvement, consolidation or reduction of site usage leading to a decision matrix to assist the State with future decisions regarding the facilities studied. The final outcome and deliverable is a report to the Bureau of General Services including methodology, analysis, overall prioritized recommendations, cost estimates and site specific information and photographs.

The vendor must clearly demonstrate:

- The ability to help develop present and future budgets across all facility needs – capital lifecycle renewal projects, energy conservation measures and retrofit projects.
- That the assessment team has a minimum of ten years experience in their respective fields (Architectural, Mechanical, Electrical, Energy, Financial/Economic, Security, etc.).
- That they have been thoroughly trained to conduct facility condition, and energy assessments
- An ability to conduct detailed facility condition assessment – determine cost liabilities for currently deficient facilities systems and components, and project building system and component lifecycle renewal based on industry standards and information compiled during assessment.
- An ability to conduct detailed energy assessment – determine option for energy retrofit opportunities based on cost of retrofit, return on investment, length of payback of investment, emission reductions, etc.

Quality Assurance and Quality Control

- It is the responsibility of the Vendor to ensure that all data submitted has been thoroughly checked for errors and accuracy. The Vendor shall evaluate both qualitative data (i.e. descriptions of the deficiencies) and quantitative data (i.e. costs and quantities).
- The Vendor shall conduct data queries to identify any incomplete or outlying data and also conduct evaluation of data on a line-by-line basis to ensure that deficiency descriptions are clear and accurate.

Report Requirements

Upon approval of the report by the Bureau of General Services, the vendor shall deliver a traditional written report (100 copies) as well as an electronic version on CD in Microsoft Word for the entire portfolio covering all facilities in Attachment B. Additionally; a separate report for each facility listed in Attachment B is required, also in Microsoft Word. Microsoft Excel may also be used if spreadsheets are submitted along with or as part of the report. Compiled detailed and summary reports are required to consist of the following:

- Executive Summary
- Background
- Assessment Methodology
- Capital Renewal Requirements based on asset description, condition and age and each asset system should be briefly described.
- Decision matrix with recommendations for the future use of the facilities listed in Attachment B
- Analysis report of all of the facilities listed in Attachment B
- Recommendations for improvements at each individual facility listed in Attachment B.

For each identified facility in Attachment B, an action plan shall be developed and included in the report. The action plan for each facility must state and explain a recommendation as to whether the facility should be retained or disposed of. For all retained facilities, the report must state and explain whether the additional programs or activities should be consolidated at the facility from elsewhere, whether the facility should continue to be used and maintained as is, whether the facility should be expanded in order to be a consolidated location for other programs and services, or whether the facility should be replaced. Additionally, regardless of the retain/dispose recommendations; the report must include an action plan for all facilities that includes the following:

- Location: Including street address, photograph of the facility and specifics within the facility. Key words (Room 123 on floor 4, East, West, North, South of building)
- Typical expected useful life of the site and remaining useful life based on observations
- Action (paint, replacement, weatherization, removal, installation, calibrate, etc.)
- Quantity (quantity to be replaced, SF for carpet, EA for HVAC, etc.)
- Energy Star Portfolio Manager rating for site before recommendations and estimated post recommendations.
- Unit cost of component replacement or improvement

Maine Bureau of General Services

Facility Energy Evaluation

- Total replacement cost for the facility and for all locations
- Estimated cost and simple payback for the action and/or by the site.

Additional information

The Bureau may ask the Vendor to perform additional services related to the subject of this RFP. The services, fees and other terms will be in a mutually agreed upon and negotiated by contract. Attachment C is a copy of the standard contract that is used by state agencies.

Photographs

Provide 300DPI or higher resolution digital photographs for each facility and include these in the report.

- Exterior photographs will be used for building identification and documentation of structural problems, major site deficiencies or special conditions. Photographs of building entry elevations shall be of presentation quality.
- Interior photographs will be used to document condition and type of structure, finishes and installed fixtures and systems

Documentation

- Upon request provide written documentation of processes, inspection methods, cost data, adopted standards, computer software and applications. Ensure Bureau staff can continue to use and update the information and systems as a permanent planning tool without Vendor support.

Services Excluded

Bureau excludes the following in the Scope of Work:

- Inventory of furniture and equipment not related to building operation
- Evaluation of conditions concealed by construction
- Destructive investigation
- Materials testing
- Condition analysis of underground utilities

Section III. Submission Requirements

The submitted proposal must include the following information:

1. Summary Submission Sheet: This is found as Attachment A. It must be completed and affixed as page 1 of the submitted proposal.

2. Experience and References: Provide information on the Vendor's organization to include:

- Project management and technology team members. Include years of experience and specific abilities.
- Sub-contractors to be used and their experience.
- Client list and their scope of projects.
- Three references with name, address, phone and email information for confirmation

3. Technical details: How will your company complete the requirements listed in the scope of work section;

- Data Collections and measurement techniques
- Analysis methodology – standardized or self developed
- Evaluation and development of the decision matrix and what criteria will be used and presented
- Report development in addition to the requested materials – what other information do you think would be helpful
- Procedures used to report on the usefulness of the facilities
- Schedule: Provide a proposed project schedule that includes at least the following:
 - Start date (Use May 1, 2010)
 - Field data collection
 - Project planning
 - Final report draft
 - Final report

4. Cost: Submit a firm, fixed price cost for the entire project, the equivalent cost per square foot assuming 231,578 square foot estimate from Attachment B, and a breakdown of the proposed fixed cost into its component fees and costs. All costs including travel expenses, reprographics and other costs are the responsibility of the vendor and are to be included and quantified in the fee proposal. Please breakdown the fixed cost for each individual region as presented in Attachment B, as part of the total firm, fixed cost. If the bidder is unable to perform the work within one of the identified regions, clearly identify the situation within your bid proposal and cost structure.

SECTION IV: Instructions

QUESTIONS AND ANSWERS:

Vendors must pre-register if they want to participate in this RFP. Vendors can pre-register by sending an email to Alan Henry at alan.henry@maine.gov. Please include "Facility Energy" in the subject line. Vendors may ask questions regarding this request for proposals. All questions must be submitted by email to alan.henry@maine.gov by 2 p.m. Friday, June 11, 2010. Questions received after 2 p.m. June 11, 2010 or by any other delivery method will not receive a reply. All questions and responses will be posted to the Bureau's web site <http://www.maine.gov/bgs> within five business days of the receipt of the question. Responses will be provided to registered vendors. Questions will be posted without identifying the source of the question, except as may be revealed incidentally by the content of the question.

SUBMISSION:

Please submit one original and five copies no later than 2:00 pm on July 15, 2010 to:

Division of Purchases
Burton M. Cross Building, 4th Floor
"RFP # 201004688 - FACILITY ENERGY EVALUATION"
111 Sewall Street, 9 State House Station
Augusta, ME 04333-0009

- A. Copies must be enclosed in a sealed envelope that are clearly labeled with the vendor's name and address and are marked "RFP 201004688 – FACILITY ENERGY". Telephone, electronic or facsimile proposals will not be considered. Proposals received after the time and date of closing will not be considered.
- B. Summary Submission Sheet is attached as Page 1 in the proposal. The proposal is limited to 30 pages, inclusive of attachments and/or supporting documents. The proposal is single spaced, Times New Roman, size 12 font, with one inch margins. All pages are sequentially numbered and the proposal is presented in order of the scoring criteria. Proposals must be clearly legible and complete. Proposals must also be provided on a CD in Microsoft Word format.
- C. The Bureau reserves the right to reject any or all proposals. The Bureau reserves the right to require interviews with the key personnel of vendors prior to contract award. Incomplete proposals may be rejected.
- D. No site visits will be conducted or permitted prior to proposal submission.
- E. Proposals will be publicly opened and the name(s) of the vendors will be announced on the due date. No other information will be made public at that time or prior to the Bureau's evaluation of all proposals and its distribution of any award notification.
- F. All submissions by vendors will be considered available for public viewing following the bid award notification, subject to the State of Maine Freedom of Access Laws (1 MRSA 401).
- G. If the Bureau is unable to successfully negotiate a contract with the highest scoring vendor, the Bureau may withdraw the award and make one in favor of the second highest scoring vendor under the same terms and conditions.

Section V: Scoring

Proposals will be evaluated and scored based on the following:

1. SUMMARY SUBMISSION SHEET: Attachment A. Reviewed for completeness and placement within the document. (5%)
2. EXPERIENCE, REFERENCES AND CAPACITY: The experience and capacity of the vendor to manage and deliver successfully on all aspects of its proposal. (20%)
3. TECHNICAL PROPOSAL: The quality and the established record of the technical solution itself in providing the intended results of this project while meeting all necessary requirements and avoiding or minimizing adverse consequences. (35%)
4. COST: The cost of the solution. (40%) Total cost for all regions as defined in Attachment B.

Section VI: Attachments

Attachment A – Summary Submission Sheet

Attachment B – Facility Data

Attachment C - Standard contract Language – BP54

Maine Bureau of General Services

Facility Energy Evaluation

Attachment A Summary Submission Sheet RFP # 201004688

Question	Answers
Current Company Name	
Employer Identification Number or State of Maine Vendor/Customer number	
Has the company changed names in the past three years, if so, what was it previously named?	
How many years has this company been in business?	
Number of employees in the company	
How many will be assigned to this project?	
Will you be sub contracting out parts of this project?	
If so, what companies will you be using and what are their areas of expertise? Years of experience?	
Have any of these companies failed to complete any work awarded? If yes, please describe the circumstances. Continue on separate sheet if necessary.	
Has your company or the sub-contractors in the past three years been cited for any violation of law, rule or regulation by any government or entity, been sued, or terminated any contract or separated from any project prior to completion? If yes, please describe. Continue on separate sheet if necessary.	
Cost of the proposal	
Estimated length of time needed to complete the project based upon the information presented.	
The company submitting this proposal affirms that the proposal meets or is capable of meeting all necessary environmental, safety, licensing and other standards as may be required by federal or state law or municipal ordinance, and further affirms and agrees that the company is responsible for identifying any such requirements and achieving approval or compliance.	
Name and Title	
Signature	
Date	

Maine Bureau of General Services

Facility Energy Evaluation

Attachment B Facility Data RFP #201004688

Dept	Site Name	Address 1	City	State	Zip Code	Floor Area	County
04A	Allagash House	35 Dickey Rd.	Allagash	ME	04774	2208	Aroostook
04A	Maine Forest Service - Ashland	Bldg 1	Ashland	ME	04732	9287	Aroostook
04A	Conservation Boating Facilities	45 Radar rd	Ashland	ME	04732	1024	Aroostook
09A	Inland Fish & Wildlife - Ashland	63 Station Hill Rd	Ashland	ME	04732	4608	Aroostook
09A	Inland Fish & Wildlife - Castle Hill	813 Haystack Rd	Castle Hill	ME	04757	1239	Aroostook
09A	Inland Fish & Wildlife - Eagle Lake		Eagle Lake	ME	04739	1800	Aroostook
04A	Maine Forest Service - North	Bldg 7 & 8, 2 Forestry Rd	Island Falls	ME	04747	9204	Aroostook
06A	Dept of Envir.Prot - Monticello	Silver St Pump	Monticello	ME	04760	1	Aroostook
01A	Dept. of Agriculture - Presque Isle	744 Main St STE 5	Presque Isle	ME	04769	2360	Aroostook
06A	Dept of Envir.Prot - Presque Isle	1235 Central Dr.	Presque Isle	ME	04769	10000	Aroostook
06A	DEP Monitoring - Presque Isle	Main St	Presque Isle	ME	04769	1	Aroostook
04A	Aroostook State Park Managers Office	87 State Park Road	Presque Isle	ME	04769	3015	Aroostook
06A	Air Emission collection - Van Buren	Main St	Van Buren	ME	04785	1	Aroostook
4						44748	13
06A	DEP - Bar Harbor	Cadillac Mt	Bar Harbor	ME	04609	1	Hancock
04A	Maine Forest Service - Hancock	258 US Hwy 1	Hancock	ME	04640	1444	Hancock
13A	Marine Res.Dept - Marine Patrol HQ	22 COAL STATION LANE	Lamoine	ME	04605	1856	Hancock
04A	Lamoine State Park Residence	23 State Park Road	Lamoine	ME	04605	1020	Hancock
06A	Air Emission collection - SW Harbor	Marshall Brook Rd	Southwest Harbor	ME	04679	1	Hancock
3						4322	5
13A	Marine Res.Dept - Boothbay Harbor	194 McKown Point Rd	Boothbay	ME	04537	77707	Lincoln
04A	Maine Forest Service - Waldoboro Rd	536 WALDOBORO RD.	Jefferson	ME	04348	7136	Lincoln
04A	Damariscotta Lake State Park Residence	536 WALDOBORO RD.	Jefferson	ME	04348	1475	Lincoln
13A	Southport Station	Capitol Island Rd	Southport	ME	04576	4818	Lincoln
2						91136	4
06A	Air Emission collection - Atkinson	Atkinson Corner	Atkinson	ME	04426	1	Piscataquis
06A	DEP Monitoring - Big Moose Twp	Rockwood Rd	Big Moose Twp	ME	04426	2400	Piscataquis
04A	Forest Fire Office -- Brownville	496 Church Street	Brownville Jct	ME	04415	3177	Piscataquis
04A	Maine Forest Service - Store house	43 Lakeview	Greenville	ME	04441	6952	Piscataquis
04A	Lily Bay State Park Residence	13 Myrles Way	Beaver Cove	ME	04441	2304	Piscataquis
04A	Peaks Kenney State Park Residence	401 State Park Road	Dover-Foxcroft	ME	04426	1150	Piscataquis
06A	DEP Monitoring - Greenville	Lincoln St	Greenville	ME	04441	1	Piscataquis
09A	IF & W HQ - Greenville	19 Village St	Greenville	ME	04441	17169	Piscataquis
3						33154	8
04A	Maine Forest Service - Beddington	Rt 1A 21 CC Rd	Beddington	ME	04622	2240	Washington
13A	Maine Atlantic Salmon Commission	RTE 193 Deblois Rd	Cherryfield	ME	04622	1800	Washington
09A	Inland Fish & Wildlife	HCR 78 Box24, 14 Fish Hatchery Lane	Grand Lake	ME	04637	10364	Washington
04A	Maine Forest Service - Jonesboro	Rt 1A 307 Whitneyville Road	Jonesboro	ME	04648	4400	Washington
09A	Dept of Fish & Wildlife - Jonesboro	Rt 1	Jonesboro	ME	04648	23632	Washington
04A	Maine Forest Service - Topsfield	52 Lakeview Dr	Topsfield	ME	04490	8832	Washington
04A	Cobscook State Park residence	40 S Edmunds Road	Edmunds TWP	ME	04628	1334	Washington
04A	Maine Forest Service - Wesley	Bldg 8 4407 Airline Rd	Wesley	ME	04686	5616	Washington
3						58218	8

Maine Bureau of General Services

Facility Energy Evaluation

Attachment C - Standard Contract Language – BP54

AdvantageME CT No: _____

STATE OF MAINE

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, _____, hereinafter called "Department," and _____, located at _____, telephone number _____, hereinafter called "Provider", for the period of _____ to _____.

The AdvantageME Vendor/Customer number of the Provider is _____

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

Rider A - Specifications of Work to be Performed

Rider B - Payment and Other Provisions

Rider C – Exceptions to Rider B

Rider G – Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 01 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in _____ original copies.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

By: _____

Chip Gavin, Director, Bureau of General Services
and

By: _____

Name and Title, Provider Representative

Total Agreement Amount: \$ _____

Approved: _____

Chair, State Purchases Review Committee

BP54 (Rev 6/04)

Maine Bureau of General Services

Facility Energy Evaluation

RIDER A

SPECIFICATIONS OF WORK TO BE PERFORMED

Maine Bureau of General Services

Facility Energy Evaluation

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Alan Henry
Title: Director of Special Projects
Address: 77 SHS, Cross Office Building, 4th Floor
Augusta, ME 04333-0077
Phone: (207) 624-7352
Email: alan.henry@maine.gov

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

Maine Bureau of General Services

Facility Energy Evaluation

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

Maine Bureau of General Services

Facility Energy Evaluation

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. EMPLOYMENT AND PERSONNEL The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. STATE EMPLOYEES NOT TO BENEFIT No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be

Maine Bureau of General Services

Facility Energy Evaluation

admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this

Facility Energy Evaluation

paragraph referred to as “claims”) resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as “person”) providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department’s negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Maine Bureau of General Services

Facility Energy Evaluation

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

Maine Bureau of General Services

Facility Energy Evaluation

RIDER C
EXCEPTIONS TO RIDER B

Maine Bureau of General Services

Facility Energy Evaluation

RIDER G

IDENTIFICATION OF COUNTRY

IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

☐

United States. Please identify state: _____

☐

Other. Please identify country: _____

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.